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No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

TURABO MEDICAL CENTER, INC. D/B/A HOSPITAL
INTERAMERICANO DE
MEDICINA AVANZADA,

Petitioner,

v.

MARÍA YOLANDA MARCANO RIVERA ET AL.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A jury awarded respondents \$5.5 million for medical malpractice. Although this is a diversity action governed by Puerto Rico law, the district court and the First Circuit refused to apply Puerto Rico's strict excessiveness standard for reviewing medical malpractice awards on the ground that the Puerto Rico standard was "similar" to the federal excessiveness standard, and denied petitioner's request for remittitur.

The following questions are presented:

1. Whether the decision below contravenes *Erie Railroad v. Tompkins* by granting respondents a recovery that more than doubles the recovery respondents could have obtained in Puerto Rico court.

2. Whether, under *Gasperini v. Center for Humanities, Inc.*, federal courts sitting in diversity must apply state law excessiveness standards (as the Eighth and Tenth Circuits have held), the federal excessiveness standard (as the Sixth, Seventh, and Ninth Circuits have held), or whether the inquiry turns on the similarity of the standards (as the First Circuit has held).

**PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT**

In addition to the parties named in the caption, the following parties were plaintiffs-appellees below and are respondents in this Court: Jorge Rodríguez Matos, Conjugal Partnership Rodríguez Marcano, Fabiola Rodríguez Marcano.

Pursuant to this Court's Rule 29.6, undersigned counsel state that Centro Medico Del Turabo, Inc. (Turabo Medical Center, Inc.) d/b/a Hospital Interamericano de Medicina Avanzada has no parent company, and no publicly held company owns 10% or more of its stock.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Turabo Medical Center, Inc. d/b/a Hospital Interamericano de Medicina Avanzada ("HIMA") respectfully submits this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at 415 F.3d 162. App., *infra*, at 1a. The order denying HIMA's petition for panel rehearing or rehearing en banc is unreported. *Id.* at 31a. The opinion of the United States District Court for the District of Puerto Rico denying HIMA's motion for remittitur is unreported. *Id.* at 20a.

JURISDICTION

The district court had jurisdiction over respondents' claims pursuant to 28 U.S.C. § 1332(a)(1). The court of appeals had jurisdiction to review the final judgment of the district court pursuant to 28 U.S.C. § 1291. The court of appeals filed its opinion on July 15, 2005. App., *infra*, at 1a. It denied HIMA's timely petition for panel rehearing or rehearing en banc on September 6, 2005. *Id.* at 31a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The Rules of Decision Act, 28 U.S.C. § 1652, provides:

§ 1652. State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

STATEMENT

This Court's decision in *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415 (1996), has generated significant confusion among lower courts. Some circuits interpret *Gasperini* as requiring the application of state excessive damages standards in all diversity cases; the First Circuit, however, engages in a case-by-case analysis and applies the state standard only where it is not "expressed in terms similar to the federal standard." App., *infra*, at 17a. A third group of circuits—in clear contravention of *Gasperini*—has continued routinely to apply federal excessiveness standards in diversity actions without undertaking any *Erie* analysis and without even considering the possibility that the state standard may govern. This case presents the Court with the opportunity to clarify *Gasperini*'s holding and to vindicate *Erie*'s fundamental purpose of ensuring that, in diversity actions, "the outcome of the litigation in the federal court [is] substantially the same . . . as it would be if tried in a State court." *Ferens v. John Deere Co.*, 494 U.S. 516, 524 (1990) (internal quotation marks omitted).

1. On the morning of September 14, 2000, María Marcano Rivera was admitted to HIMA, a hospital located in Caguas, Puerto Rico, pursuant to her obstetrician's decision to induce labor. App., *infra*, at 2a. The obstetrician, Dr. Pedro Roldán Millan, was not a HIMA employee, but had privileges to practice in the hospital. *Id.*

HIMA nurses connected Marcano to a fetal heart rate monitor, and Dr. Roldán then induced labor by simultaneously administering to Marcano both an intravenous drip containing Oxytocin and a 100-mcg tablet of Cytotec. App., *infra*, at 2a-3a. Both drugs stimulate uterine contractions. *Id.* at 3a. When administered together, they have a multiplier effect that produces frequent and intense contractions that can decrease the flow of oxygen to the fetus. *Id.* The simultaneous administration of Oxytocin and Cytotec is therefore

contrary to HIMA protocol and the standards of the American College of Obstetricians and Gynecologists. *Id.* The 100-mcg tablet of Cytotec was also four times larger than the recommended dose. *Id.*

After administering the drugs to Marciano at 11:45 a.m., Dr. Roldán left her room and did not return for three hours. App., *infra*, at 3a. Marciano testified at trial that she soon began to experience intense contractions and that the HIMA nurse responsible for monitoring her condition did not respond to her calls. *Id.* The HIMA nurse's manual recordings of the fetal heart rate do not reveal any fetal distress during this period. *Id.* at 4a.

Dr. Roldán returned to Marciano's room at 2:45 p.m. and remained with her throughout the duration of the delivery. App., *infra*, at 3a. The fetal heart rate tracing indicates that the intensity of Marciano's contractions increased at 3:45 p.m. and that the fetus's heart rate simultaneously dropped, which suggests that the fetus was not receiving adequate oxygen. *Id.* at 4a. Both HIMA's and respondents' experts agreed at trial that Dr. Roldán should have responded to Marciano's condition by disconnecting the Oxytocin drip to reduce the strength of her contractions, turning Marciano on her side to increase the flow of oxygen to the fetus, administering oxygen to Marciano, and—if these measures failed—performing a cesarean section. *Id.* at 9a-10a. Dr. Roldán took none of these steps. *Id.* at 10a.

According to the fetal heart rate tracing, Marciano's intense contractions and the low fetal heart rate continued until at least 5:00 p.m., when the heart rate monitor was disconnected in preparation for delivery. App., *infra*, at 4a. Baby Fabiola was born at 6:19 p.m. *Id.* She was immediately taken to HIMA's neonatal intensive care unit, where she was diagnosed with neonatal asphyxia. *Id.* The deprivation of oxygen to the brain caused Fabiola permanent neurological

damage, and she will require a caregiver for the rest of her life. *Id.* at 5a.

2. Marcano and her husband filed a medical malpractice action on behalf of themselves, their conjugal partnership, and Fabiola against Dr. Roldán, his insurance company, and HIMA in the Puerto Rico Court of First Instance. Four months later, Marcano and her husband filed a nearly identical suit in the United States District Court for the District of Puerto Rico, App., *infra*, at 5a, and obtained a voluntary dismissal of their suit in Puerto Rico court. The federal complaint, which premised jurisdiction on diversity of citizenship and asserted claims under Puerto Rico law, alleged that Fabiola's injuries were caused by negligence on the part of Dr. Roldán and HIMA. *Id.*

Respondents settled their claims against Dr. Roldán and his insurer for \$500,000, App., *infra*, at 5a, but their claim against HIMA proceeded to trial. Because Dr. Roldán was not a HIMA employee, Puerto Rico law required respondents to establish that HIMA itself had committed negligent acts that caused Fabiola's neurological injuries. *Id.* at 5a n.3. Respondents' case against HIMA rested entirely upon the allegation that the HIMA nurse failed to monitor Marcano's contractions and the fetal heart rate between 11:45 a.m. and 2:45 p.m., when Dr. Roldán was absent from Marcano's room. *Id.* at 5a.

The jury returned a \$5.5 million verdict in favor of respondents. App., *infra*, at 6a. It awarded \$4 million to Fabiola; \$1 million to Marcano; and \$500,000 to Marcano's husband. *Id.* at 18a. The award to Fabiola included \$1.9 million for future health-care costs, \$1.75 million for mental and physical suffering, and \$350,000 for loss of income. *Id.* at 17a-18a. Because the jury apportioned 47% of the fault to HIMA and 53% to Dr. Roldán, HIMA is responsible for \$2.585 million of the total judgment. *Id.* at 6a.

After the verdict, HIMA moved for judgment as a matter of law or for a new trial because all the evidence presented at trial indicated that Dr. Roldán alone was responsible for Fabiola's injuries. The district court disagreed, and concluded that a reasonable jury could have found that the HIMA nurse's alleged failure to monitor Marciano's contractions and the fetal heart rate contributed to Fabiola's injuries. App., *infra*, at 23a.

HIMA also moved for remittitur on the ground that the \$5.5 million verdict exceeded the recovery respondents would have obtained in a Puerto Rico court. HIMA argued that, because respondents' suit was a diversity action governed by Puerto Rico law, this Court's decision in *Gasperini*, 518 U.S. 415, required the district court to evaluate the \$5.5 million verdict under Puerto Rico's medical malpractice excessive damages standard. Under that standard, the Puerto Rico Supreme Court inquires whether a verdict is "ridiculously low or exaggeratedly high" by comparing it to awards in similar Puerto Rico cases. See *Nieves-Cruz v. Universidad de Puerto Rico*, 151 P.R. Dec. 150 (2000) (App., *infra*, at 52a).¹

The district court denied HIMA's motion for remittitur and rejected the argument that excessiveness should be determined by reference to Puerto Rico law. App., *infra*, at 25a. Relying upon First Circuit decisions that refused to apply Puerto Rico's excessive damages standard in diversity actions and that instead utilized the federal standard, the district court explained that "[f]ederal district courts are not constrained by the amounts awarded by the Supreme Court of Puerto Rico when making a determination of alleged exces-

¹ Certified translations of the Puerto Rico decisions cited in this petition were filed with the First Circuit and are reproduced in the Appendix, *infra*.